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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE CONCHAS CAMARENA,

Defendant and Appellant.

2d Crim. No. B170579
(Super. Ct. No. 2002005738)
(Ventura County)

After a guilty plea, Jose Conchas Camarena was convicted of possession of a controlled substance. (Health & Saf. Code, § 11377, subd. (a).) He moved to vacate the judgment and plea on the ground that he was not adequately advised of the immigration consequences of his conviction. He appeals denial of the motion, claiming the trial court erred both in ruling that the motion was untimely, and in ruling that the advisements were sufficient to satisfy Penal Code section 1016.5.¹ We affirm.

FACTS AND PROCEDURAL HISTORY

Camarena pleaded guilty to the offense in March 2002. The trial court deferred entry of judgment pending completion of a diversion program. Judgment was

¹ All further statutory references are to the Penal Code unless otherwise stated.

entered in September 2002 after two diversion violations, and Camarena was placed on three years probation.

At the time of his plea, Camarena signed a felony plea form advising him: "If I am not a citizen, I could be deported, excluded from the United States or denied naturalization. . . . If I am not a citizen and am pleading guilty to . . . a controlled substance offense . . . , I will be deported, excluded from the United States and denied naturalization." In the plea form, Camarena stated that he discussed the consequences of his plea with counsel, and counsel stated that he had advised his client of the consequences of the plea and was satisfied that Camarena understood them. At the hearing, the prosecutor verbally asked Camarena whether he understood that he "could be deported, excluded, or denied naturalization from the United States" Camarena answered yes.

In June 2003, Camarena filed his motion to vacate, claiming he was not properly advised that one immigration consequence of his plea was exclusion from readmission into the United States. (See § 1016.5.) The motion states that Camarena first learned of this consequence in September 2002 when the INS informed him that it was conducting an investigation to determine whether he was subject to removal from the United States. In his declaration, Camarena states that he would not have pleaded guilty if he had known that it would result in "exile" from the country. Camarena also states that he had been a legal resident of the United States since 1989.

On August 8, 2003, the trial court denied Camarena's motion as both untimely and without substantive merit.

DISCUSSION

Camarena contends that the trial court erred in finding that his motion was untimely and that he had been adequately advised of the immigration consequences of his plea. We disagree.

Camarena asserts that his motion was brought with "reasonable diligence" 15 months after his guilty plea and 9 months after learning that he might be excluded from the United States. (See *People v. Castaneda* (1995) 37 Cal.App.4th 1612, 1619; see

also *People v. Totari* (2003) 111 Cal.App.4th 1202, 1207-1209.) It is not necessary for us to decide the timeliness finding by the trial court, however, because the record amply supports denial of the motion on its merits.

Section 1016.5 requires the trial court to give the following advisement before accepting a guilty plea: "If you are not a citizen, you are hereby advised that conviction of the offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States." (§ 1016.5, subd. (a).) If the advisement is not given and the conviction has immigration consequences, "the court, on defendant's motion, shall vacate the judgment and permit the defendant to withdraw the plea of guilty or nolo contendere, and enter a plea of not guilty." (§ 1016.5, subd. (b).)

In order to prevail on such a motion, a defendant must establish (1) he or she was not properly advised of the immigration consequences as provided by the statute, (2) there is more than a remote possibility that the conviction will have one or more of the specified immigration consequences, and (3) that he or she will be prejudiced by the nonadvisement. (*People v. Totari* (2002) 28 Cal.4th 876, 884.) The admonitions may be communicated in writing and need not be repeated verbally. (*Arlena M. v. Superior Court* (2004) 121 Cal.App.4th 566, 570; *People v. Gutierrez* (2003) 106 Cal.App.4th 169, 174-175.) We review the denial of a motion to vacate under section 1016.5 for abuse of discretion. (*People v. Superior Court (Zamudio)* (2000) 23 Cal.4th 183, 192.)

Here, Camarena was adequately advised of all three immigration consequences when he signed the March 2002 plea form stating that he could (and would) be "deported, excluded from the United States and denied naturalization." Camarena argues that use of the phrase "excluded from the United States" in the plea form did not inform him that a conviction would prevent readmission into the United States. He claims that the phrase "excluded from the United States" simply told him he would be deported, not that he might suffer the additional consequence of being forever barred from obtaining lawful admission. We disagree.

Substantial compliance with section 1016.5 is sufficient, and the use of different words than the exact words of section 1016.5 is permissible as long as the defendant is advised of the three separate immigration-related consequences he might suffer. (*People v. Superior Court (Zamudio)*, *supra*, 23 Cal.4th at p. 207; *People v. Gutierrez*, *supra*, 106 Cal.App.4th at pp. 173-174.) The phrase "excluded from the United States" utilized in Camarena's plea form is the equivalent of the statutory phrase "exclusion from admission to the United States." The phrase "excluded from the United States" necessarily refers to the physical exclusion of an alien who is trying to enter or reenter the United States. (*Zamudio*, at pp. 207-208.) Thus, when Camarena was advised he could be excluded from the United States, he was advised that he could be excluded *from admission* to the country. Moreover, Camarena was represented by counsel at all times during the proceedings and stated that he had discussed the immigration consequences of his plea with his counsel and understood the advisements he was given.

The order denying the motion to vacate is affirmed.

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PERREN, J.

We concur:

YEGAN, Acting P.J.

COFFEE, J.

Barry B. Klopfer, Judge
Superior Court County of Ventura

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